

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 108, 121, and 135

[Docket No. FAA-2000-7497; Notice No. 00-06]

RIN 2120-AH01

Advanced Qualification Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to establish a new termination date for Special Federal Aviation Regulation (SFAR) No. 58 (55 FR 40275; October 2, 1990), which provides for the approval of an alternate method (known as "Advanced Qualification Program" or "AQP") for qualifying, training and certifying, and otherwise ensuring the competency of crewmembers, aircraft dispatchers, other operations personnel, instructors, and evaluators who are required to be trained or qualified under parts 121 and 135 of the FAR. This proposed extension is necessary to establish a new termination date for SFAR 58 to allow time for the FAA to complete the rulemaking process that will incorporate SFAR 58 into 14 CFR part 121. The current termination date for SFAR 58 is October 2, 2000.

DATES: Send your comments on or before July 17, 2000.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2000-7497 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov>. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas M. Longridge, Advanced Qualification Program Branch, AFS-230, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, P.O. Box 20027, Dulles

International Airport, Washington, DC 20041-2027; telephone (703) 661-0260.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or

delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made:

"Comments to Docket No. FAA-2000-7497." The postcard will be date stamped and mailed to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512-1661).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

In 1975, the FAA began to address two issues in part 121 pilot training and checking. One issue was the hardware requirements needed for total simulation. The other issue was the redesign of training programs to deal with increasingly complex human factors problems and to increase the safety benefits derived from the simulation. At the urging of the air transportation industry, the FAA addressed the hardware issue first. This effort culminated in 1980 in the development of the Advanced Simulation Program, set forth in 14 CFR part 121, Appendix H.

Since then, the FAA has continued to pursue approaches for the redesign of training programs to increase the benefits of Advanced Simulation and to deal with the increasing complexity of cockpit human factors.

On August 27, 1987, FAA Administrator McArtor addressed the chief pilots and certain executives of many air carriers

at a meeting held in Kansas City. One of the issues discussed at the meeting focused on flight crewmember performance issues. This meeting led to the creation of a Joint Government-Industry Task Force on flightcrew performance (Joint Task Force). It was comprised of representatives from major air carriers and air carrier associations, flightcrew member associations, commuter air carrier and regional airline associations, and government organizations. On September 10, 1987, the Joint Task Force met at the Air Transport Association's headquarters to identify and discuss flightcrew member performance issues. Working groups in three major areas were formed: (1) man/machine interface; (2) flightcrew member training; and (3) operating environment. Each working group submitted a report and recommendations to the Joint Task Force. On June 8, 1988, the recommendations of the Joint Task Force were presented to Administrator McArtor.

The major recommendations to the Administrator from the flightcrew member training working group were the following: (1) Require 14 CFR part 135 commuters whose airplane operations require two pilots to comply with part 121 training, checking, qualification, and record keeping requirements; (2) Provide for a Special Federal Aviation Regulation (SFAR) and Advisory Circular to permit

development of innovative training programs; (3) Establish a National Air Carrier Training Program Office that provides training program oversight at the national level; (4) Require seconds-in-command to satisfactorily perform their duties under the supervision of check airmen during operating experience; (5) Require all training to be accomplished through a certificate holder's training program; (6) Provide for approval of training programs based on course content and training aids rather than using specific programmed hours; (7) Require Cockpit Resource Management (CRM) (now called Crew Resource Management) Training. Specific recommendations were listed regarding regulatory changes. The recommendations were separated into those changes that should be incorporated into an SFAR and those that should be incorporated into an accompanying Advisory Circular.

In June 1988, the National Transportation Safety Board (NTSB) issued a Safety Recommendation (A-88-71) on the subject of CRM. The recommendation stemmed from an NTSB accident investigation of a Northwest Airline crash on August 16, 1987, in which 148 passengers, 6 crewmembers, and 2 people on the ground were killed.

The NTSB noted that both crewmembers had received single-crewmember training during their last simulator

training and proficiency checks. In addition, the last CRM training they had received was 3.5 hours of ground school (general) CRM training in 1983. As a result of its investigation, the NTSB recommended that all part 121 carriers:

Review initial and recurrent flightcrew training programs to ensure that they include simulator or aircraft training exercises which involve cockpit resource management and active coordination of all crewmember trainees and which will permit evaluation of crew performance and adherence to those crew coordination procedures.

In response to the recommendations from the Joint Task Force and from the NTSB, in October 1990, the FAA published SFAR 58, Advanced Qualification Program (AQP), which addresses all of the above recommendations. The FAA also published an Advisory Circular on AQP that describes an acceptable methodology by which the provisions of the SFAR may be achieved. Under SFAR 58, certificated air carriers, as well as training centers they employ, are provided with a regulatory alternative for training, checking, qualifying, and certifying aircrew personnel subject to the provisions of 14 CFR parts 121 and 135.

Air carrier participation in AQP is entirely voluntary. Carriers electing not to participate may continue to operate

under the traditional FAA provisions for training and checking. The long range advantages to participation, however, are numerous. The regulatory provisions of AQP offer the flexibility to tailor training and certification activities to a carrier's particular needs and operational circumstances. They encourage innovation in the development of training strategies. They include wide latitude in choice of training methods and media. They permit the use of flight training devices for training and checking on many tasks that historically have been accomplished in airplane simulators. They provide an approved means for the applicant to replace FAA-mandated uniform qualification standards with carrier-proposed alternatives tailored to specific aircraft. They permit the applicant to establish an annual training and checking schedule for all personnel, including pilots-in-command, and provide a basis for extending that interval under certain circumstances.

From an FAA perspective, the overriding advantage of AQP is quality of training. AQP provides a systematic basis for matching technology to training requirements and for approving training program content based on relevance to operational performance. The FAA's goal for this program is to improve safety through improved training.

The initial goal of the SFAR was to improve flightcrew performance by providing alternative means of complying with certain current provisions in the federal aviation regulations that may inhibit innovative use of some modern technology that could facilitate the training of flightcrew members. The SFAR has encouraged carriers to become innovative in their approach to training. Based on the aviation industry participation and enthusiasm in AQP, the extension of SFAR 58 is necessary until the rulemaking project that will codify AQP as a permanent regulation is completed.

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this proposal indicates that it's economic impact is minimal. Since its costs and benefits do not make it a "significant regulatory action" as defined in the Order, we have not prepared a "regulatory evaluation," which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies

and Procedures. We do not need to do the latter analysis where the economic impact of a proposal is minimal.

AQP is not mandatory, consequently, those operators who choose to participate in the program would do so only if it was in their best interest. Enough operators have found it in their best interest that AQP has become an important means for meeting the requirements for air carrier training programs. AQP gives air carriers flexibility in meeting the safety goals of the training programs in 14 CFR parts 121 and 135 without sacrificing any of the safety benefits derived from those programs. Thus, extending AQP for another 5 years would not impose any additional costs nor decrease the present level of safety. Because this proposal is extending an existing, voluntary program that has become an important means for some operators to comply with training requirements, the FAA finds that a detailed regulatory evaluation is not necessary.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to

regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This rulemaking allows certain air carriers to continue participating in a voluntary, alternative method for qualifying, training and certifying, and otherwise ensuring competency of crewmembers, aircraft dispatchers, and other operational personnel, instructors, and evaluators who are

required to be trained or qualified under 14 CFR parts 121 and 135. As such, this rulemaking would not impose any additional cost on those air carriers. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small air carriers.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule

and has determined that it would have only a domestic impact and therefore no affect on any trade-sensitive activity.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their

designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1553, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

The FAA determines that this proposal does not contain a significant intergovernmental or private sector mandate as defined by the Act.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix

4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) P.L. 94-163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 61

Air safety, Air transportation, Aviation safety, Safety.

14 CFR Part 63

Air safety, Air transportation, Airmen, Aviation safety, Safety, Transportation

14 CFR Part 65

Airman, Aviation Safety, Air transportation, Aircraft.

14 CFR Part 108

Airplane operator security, Aviation security, Aviation safety, Air transportation, Air carriers, Airlines, Security measures, Transportation, Weapons.

14 CFR Part 121

Aircraft pilots, Airmen, Aviation safety, Pilots,

Safety.

14 CFR Part 135

Air carriers, Air transportation, Airmen, Aviation safety, Safety, Pilots.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend SFAR 58 (14 CFR parts 61, 63, 65, 108, 121, and 135) of Title 14, Code of Federal Regulations, as follows:

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45303.

2. The authority citation for part 63 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40108, 40113, 44701-44703, 44710, 44712, 44714, 44716, 44717, 44722, 45303.

3. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44703, 44707, 44709-44711, 45102-45103, 45301-45302.

4. The authority citation for part 108 continues to read as follows:

Authority: 49 U.S.C. 106(g); 5103, 40113, 40119, 44701-44702, 44705, 44901-44905, 44907, 44913-44914, 44932, 44935-44936, 46105.

5. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 449112, 46105.

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722.

7. SFAR 58 is amended by revising the expiration date in paragraph 13.

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13. Expiration. This Special Federal Aviation

Regulation terminates on October 2, 2005, unless sooner terminated.

Issued in Washington, DC on June 8, 2000.

/s/L. Nicholas Lacey

Director, Flight Standards Service